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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20005

FEB 22 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Parts 2 and 15 )  
to Prohibit Marketing of Radio )  
Scanners Capable of )  
Intercepting Cellular Telephone )  
Conversations )

ET Docket No. 93-1

**To: The Commission**

## COMMENTS OF FLEET CALL, INC.

### FLEET CALL, INC.

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February 22, 1993

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**To: The Commission**

**I. INTRODUCTION**

Fleet Call, Inc., ("Fleet Call") respectfully submits the following Comments on the Federal Communications Commission's (the "Commission") Notice of Proposed Rulemaking (the "Notice") in the above-captioned proceeding.<sup>1/</sup>

The Commission proposes amending Parts 2 and 15 of its Rules to implement Section 403 of the recently-enacted Telephone Disclosure and Dispute Resolution Act (the "Telephone Disclosure Act").<sup>2/</sup> The legislation directs the Commission to enact regulations denying equipment authorization for any scanning receiver capable of:

- (1) receiving transmissions on frequencies allocated to the Domestic Public Cellular Radio Telecommunications Service;<sup>3/</sup>

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<sup>1/</sup> FCC 93-1, released January 13, 1993.

<sup>2/</sup> Public Law 102-556, October 28, 1992.

<sup>3/</sup> Frequencies in the 824-849 and 869-894 MHz bands are allocated to the cellular radio service.

(2) readily being altered by the user to receive such transmissions; or

(3) being equipped with decoders that convert digital cellular transmission to analog voice audio.4/

Fleet Call supports the expeditious adoption of the Notice including expansion of the applicability of the proposed rules to include frequencies allocated to the Specialized Mobile Radio ("SMR") service.5/ This would improve the privacy of communications on exclusive channels by users of SMR systems thereby providing more desirable services to the public.

## II. BACKGROUND

Fleet Call is the second largest licensee of SMR systems in the United States. Fleet Call and its subsidiaries provide communications for approximately 140,000 mobile units on a daily basis on both 800 MHz and 900 MHz SMR systems. These systems provide dispatch and mobile telephone services for businesses, governmental agencies, and individuals -- particularly those with fleets of vehicles and/or field personnel -- enabling them to "stay in touch" and improve their productivity. Approximately 1.4 million SMR units are in operation today helping millions of Americans do their jobs more efficiently and effectively.6/

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4/ The proposed rules would also prohibit the manufacture or importation of radio scanners capable of receiving cellular transmissions.

5/ Frequencies in the 806-821/851-866 MHz and 896-901/935-940 MHz bands are allocated for SMR systems and are immediately adjacent to the cellular frequencies.

6/ The SMR industry today serves approximately 1.5 million mobile units.

On February 13, 1991, the Commission authorized Fleet Call to construct and operate 800 MHz Enhanced Specialized Mobile Radio ("ESMR") systems in Chicago, Dallas, Houston, Los Angeles, New York and San Francisco.<sup>7/</sup> These systems will use innovative state-of-the-art technology, including digital transmission and frequency reuse, to create in excess of 15 times the customer capacity of Fleet Call's existing SMR systems while providing improved transmission quality and enhanced services.<sup>8/</sup> Fleet Call's first ESMR system will be operational in Los Angeles in August 1993 followed by San Francisco in early 1994.

### III. DISCUSSION

A. The Commission Should Extend the Proposal to Deny Equipment Authorization to Scanners Capable of Tuning Specialized Mobile Radio Frequencies

The Notice proposes to deny required Commission equipment authorization to scanning receivers that tune frequencies used by cellular telephones or that are capable of "readily being altered by the user to receive cellular transmissions."<sup>9/</sup> It also

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<sup>7/</sup> In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991) (the "Fleet Call Waiver Order"), recon. den. 6 FCC Rcd 6989 (1991).

<sup>8/</sup> By using digital speech coding technology, ESMR systems offer greatly improved privacy over existing analog SMR and cellular systems. Fleet Call's ESMR systems will have capacity for over four million users in its six markets -- making privacy protection important. As discussed below, applying the proposals contained in the Notice to the SMR frequencies, particularly prohibiting scanners with decoders capable of converting digital transmissions to analog voice, would safeguard the improved security and privacy inherent in ESMR systems.

<sup>9/</sup> Notice at para. 7.

proposes to deny equipment authorization to any scanning receiver that can be equipped with a decoder that converts digital cellular transmissions to analog voice audio or converters that can tune cellular frequencies.

Section 705 of the Communications Act of 1934, as amended, makes it illegal to intentionally intercept, receive or assist in receiving any interstate or foreign communications by wire or radio and to publish or use such communications for any purpose. In addition, the Electronic Communications Privacy Act of 1986 amended prior law to prohibit the intentional interception of cellular and other wire, electronic or oral communications or the manufacture of equipment primarily useful for that purpose.<sup>10/</sup> The proposed rules are intended to assist in enforcing these provisions.

Accordingly, the Commission should expand the applicability of its proposals to prohibit scanners capable of tuning the frequencies allocated to the SMR service. SMR systems are used by businesses and individuals to dispatch vehicles, make mobile telephone calls interconnected with the landline telephone network, transfer data and facilitate the conduct of commercial and personal activities. They enable people to "stay-in-touch" and carry out their business more efficiently. As a private land mobile radio service, SMR licensees and users do not intend that these communications be publicly available. SMR users have the same

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<sup>10/</sup> See 18 U.S.C. Sections 2511, 2512. SMR transmissions, particularly those using exclusive frequency assignments, are not intended to be readily accessible to the general public and are therefore protected from intentional interception.

privacy expectations and rights to privacy as users of cellular radio systems and the landline network.<sup>11/</sup>

Expanding the application of the proposed rules to SMRS would be technically simple since the SMR and cellular allocations are adjacent. It would place no additional burden on scanner manufacturers if implemented concurrently with the cellular scanning restrictions and would not impede legitimate scanner uses.<sup>12/</sup>

Moreover, as discussed above, the Commission has authorized Fleet Call and other SMR operators to reconfigure their traditional analog SMR systems into high-capacity, multiple site digital systems capable of offering enhanced high quality communications more efficiently and effectively. Fleet Call's ESMR systems will use digital voice coding and Time Division Multiple Access

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<sup>11/</sup> In enacting the Electronic Communications Privacy Act of 1986, Congress took note of the fact that since the AT&T divestiture and deregulation:

"many different companies, not just common carriers, offer a wide variety of telephone and other communications services. It does not make sense that a phone call transmitted via common carrier is protected by the current federal wiretap statute, while the same phone call transmitted via a private telephone network . . . would not be covered by the statute." Senate Report No. 99-541, 99th Congress 2d Sess., October 17, 1986.

Congress thus amended the then-existing wiretap provisions to expand their applicability by, among other things, deleting the requirement that protected communications be transmitted via common carrier. Senate Report at p. 11. See 18 U.S.C. Section 2510(1).

<sup>12/</sup> In fact, enacting rules prohibiting scanning of both cellular and SMR frequencies at one time would minimize the impact of these changes on manufacturers.

transmission to vastly improve privacy protection in comparison to analog radio systems. Prohibiting scanners from tuning these systems will further protect the public's higher privacy expectations for these advanced systems and thereby contribute to their successful introduction.

In particular, the Commission should deny equipment authorization to any scanner equipped with a decoder capable of converting digital SMR transmissions to analog voice audio. These devices have no legitimate lawful purpose in scanning receivers that can tune bands used for private communications or commercial non-public transmissions. Fleet Call is investing hundreds of millions of dollars to bring the benefits of ESMR service to the public in capacity-constrained markets; assuring the privacy of ESMR and SMR communications as proposed herein would manifestly serve the public interest.

#### IV. CONCLUSION


Fleet Call applauds the Commission's proposed rules implementing the recently enacted Telephone Disclosure Act. Fleet Call urges the Commission to broaden the applicability of the proposed rules to include the 800 MHz and 900 MHz SMR frequencies. This would safeguard the privacy rights of mobile radio customers by enforcing the radio transmission interception and monitoring prohibitions of Section 705 of the Act and Sections 2511 and 2512 of Title 18. It would have virtually no additional impact on

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scanner manufacturers while assuring that scanners can only be used for legitimate and lawful purposes.

Respectfully submitted,

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Dated: February 22, 1993



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Fleet Call, Inc. has been mailed by United States first class mail, postage prepaid, this 22nd day of February 1993, to the following:

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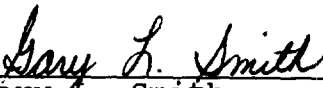
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